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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------------|------------------------|
| 10/537,570  | 06/03/2005  | Hideki Nabesako      | 7217/71166                      | 3574                   |
| 530 7590 10/29/2007<br>LERNER, DAVID, LITTENBERG,<br>KRUMHOLZ & MENTLIK<br>600 SOUTH AVENUE WEST<br>WESTFIELD, NJ 07090 |             |                      | EXAMINER<br>PATEL, CHANDRAHAS B |                        |
|   |             |                      | ART UNIT<br>2616                | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>10/29/2007         | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/537,570

Applicant(s)

NABESAKO ET AL.

Examiner

Chandrabas Patel

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/31/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: **Fig. 6, reference numerals 21, 23, 25 and 26; Fig. 7, reference numerals 32 and 34; Fig. 9 reference numeral 46 are not mentioned in specification.** Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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3. Claims 1, 2, 4-7, 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Ro (US-PGPUB 2002/0150123).

**Regarding claim 1**, Ro teaches an encoding/transmitting apparatus [Fig. 2, 101] comprising: input means for inputting data [Fig. 2, 106]; encoding means for encoding the data input by the input means [Fig. 2, 206, 212]; storage means for storing encoded data generated by the encoding means [Fig. 2, 215]; multiplexing means for multiplexing the encoded data stored in the storage means and transmitting the multiplexed data to a predetermined receiving apparatus through a network [Fig. 2, 214]; and monitoring means for monitoring a state of the network, wherein the multiplexing means controls a multiplexing rate thereof in accordance with the state of the network detected by the monitoring means [Fig. 2, 220, Page 4, Paragraph 46-47].

**Regarding claim 2**, Ro teaches encoding means receives transmission information indicating the encoded data transmitted by the multiplexing means, calculates an area occupied by data in the storage means, based on the transmission information, stops an encoding process of the encoding means when the area occupied by data in the storage means is larger than a predetermined value, and causes the encoding means to perform the encoding process when the area occupied by the data in the storage means is smaller than the predetermined value [Page 4, Paragraph 46-49].

**Regarding claim 4**, Ro teaches storing and controlling an amount in which the multiplexing means can transmit data [Page 4, Paragraph 46].

**Regarding claim 5**, Ro teaches the data includes a plurality of program data items, the encoding means encodes the program data items, independently of each other, the storage means

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stores the encoded program data items, independently of each other, and the multiplexing means multiplexes the encoded program data items, generating one output data item [Page 4, Paragraph 45-46].

**Regarding claim 6**, Ro teaches an encoding/transmitting method [Fig. 2, 201] comprising: a step of inputting data [Fig. 2, 106]; a step of encoding the data input in the step of inputting [Fig. 2, 206, 212]; a step of storing, in a storage unit, encoded data generated in the step of encoding the data [Fig. 2, 215]; and a step of multiplexing the encoded data stored in the storage unit and transmitting the multiplexed data to a predetermined receiving apparatus through a network, wherein, in the step of multiplexing the encoded data, a state of the network is input and a multiplexing rate is controlled in accordance with the state of the network, that has been input [Fig. 2, 214, 220, Page 4, Paragraph 46-47].

**Regarding claim 7**, Ro teaches transmission information indicating the encoded data transmitted in the step of multiplexing the encoded data is input, an area occupied by the data in the storage unit is calculated based on the transmission information, and an encoding process is stopped when an area occupied by the data in the storage unit is larger than a predetermined value, and the encoding process is performed when the area occupied by the data in the storage unit is smaller than the predetermined value [Page 4, Paragraph 46-49].

**Regarding claim 9**, Ro teaches the data includes a plurality of program data items, the program data items are encoded, independently of each other, in the step of encoding the data, the encoded program data items are stored in the storage unit, independently of each other, in the step of storing the encoded data, and the program data items are multiplexed in the step of

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multiplexing the encoded data, thereby generating one output data item [Page 4, Paragraph 45-46].

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ro (US-PGPUB 2002/0150123) in view of Terao et al. (USPN 7,187,844).

**Regarding claims 3 and 8, Ro teaches the data includes audio data [Fig. 2, 208].**

However, Ro does not teach fading-out of the audio data to be encoded before the encoding means is stopped, and fading-in of the audio data when the encoding means is started again.

Terao teaches fading-out of the audio data to be encoded before the encoding means is stopped, and fading-in of the audio data when the encoding means is started again [Col. 5, lines 40-44].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to fade-out and fade-in audio data so that audio level can be gradually decreased and increased [Col. 5, lines 44-47].

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chandrahas Patel whose telephone number is 571-270-1211. The examiner can normally be reached on Monday through Thursday 7:30 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*CBP*

  
CHARLES G. SHAH  
PRIMARY PATENT EXAMINER